

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 842
95TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 23, 2009, with recommendation that the Senate Committee Substitute do pass.

2042S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 339.503 and 339.710, RSMo, and to enact in lieu thereof two new sections relating to real estate.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 339.503 and 339.710, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 339.503 and 339.710, to
3 read as follows:

339.503. As used in sections 339.500 to 339.549, the following words and
2 phrases mean, unless the context clearly indicates otherwise:

3 (1) "Appraisal" or "real estate appraisal", an objective analysis, evaluation,
4 opinion, or conclusion relating to the nature, quality, value or utility of specified
5 interests in, or aspects of, identified real estate. An appraisal may be classified
6 by subject matter into either a valuation or an analysis;

7 (2) "Appraisal assignment", an engagement for which a person is
8 employed or retained to act as a disinterested third party in rendering an
9 objective appraisal;

10 (3) "Appraisal foundation", the organization of the same name that was
11 incorporated as an Illinois not-for-profit corporation on November 20, 1987, whose
12 operative boards are the appraisal standards board and the appraiser
13 qualifications board;

14 (4) "Appraisal report", any communication, written or oral, of an
15 appraisal. The purpose of an appraisal is immaterial, therefore valuation reports,
16 real estate counseling reports, real estate tax counseling reports, real estate
17 offering memoranda, mortgage banking offers, highest and best use studies,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 market demand and economic feasibility studies and all other reports
19 communicating an appraisal analysis, opinion or conclusion are "appraisal
20 reports", regardless of title;

21 (5) "Appraisal standards board (ASB)", the independent board of the
22 appraisal foundation which promulgates the generally accepted standards of the
23 appraisal profession and the uniform standards of professional appraisal
24 practices;

25 (6) "Appraiser qualifications board (AQB)", the independent board of the
26 appraisal foundation which establishes minimum experience, education and
27 examination criteria for state licensing of appraisers;

28 (7) **"Boat dock", a structure for loading and unloading boats and**
29 **connecting real property to water, public or private. A boat dock is**
30 **real property and has riparian rights, provided:**

31 (a) **The lender includes the boat dock as a fixture both in the**
32 **lender's deed of trust and a uniform commercial code fixture filing**
33 **under section 400.9-502, RSMo;**

34 (b) **The boat dock is attached to the real property by steel cable,**
35 **bar, or chain that is permanently imbedded in concrete or rock, and**
36 **otherwise securely attached to the dock; and**

37 (c) **The owner of the dock has riparian rights by means of real**
38 **estate rights bordering the body of water, including such rights by**
39 **license, grant, adverse possession, or other means allowing access to**
40 **the body of water, which access may be seasonal because the water may**
41 **be reduced for electric power production or flood control;**

42 (8) "Broker price opinion", an opinion of value, prepared by a real estate
43 licensee for a fee, that includes, but is not limited to, analysis of competing
44 properties, comparable sold properties, recommended repairs and costs or
45 suggested marketing techniques. A broker price opinion is not an appraisal and
46 shall specifically state it is not an appraisal;

47 [(8)] (9) "Certificate", the document issued by the Missouri real estate
48 appraisers commission evidencing that the person named therein has satisfied the
49 requirements for certification as a state-certified real estate appraiser and
50 bearing a certificate number assigned by the commission;

51 [(9)] (10) "Certificate holder", a person certified by the commission
52 pursuant to the provisions of sections 339.500 to 339.549;

53 [(10)] (11) "Certified appraisal report", an appraisal prepared or signed

54 by a state-certified real estate appraiser. A certified appraisal report represents
55 to the public that it meets the appraisal standards defined in sections 339.500 to
56 339.549;

57 [(11)] (12) "Commission", the Missouri real estate appraisers commission,
58 created in section 339.507;

59 [(12)] (13) "Comparative market analysis", the analysis of sales of similar
60 recently sold properties in order to derive an indication of the probable sales price
61 of a particular property undertaken by a licensed real estate broker or agent, for
62 his or her principal. A comparative market analysis is not an appraisal and shall
63 specifically state it is not an appraisal;

64 [(13)] (14) "Disinterested third party" shall not exclude any
65 state-certified real estate appraiser or state-licensed real estate appraiser
66 employed or retained by any bank, savings association, credit union, mortgage
67 banker or other lender to perform appraisal assignments, provided that the
68 appraisal assignments are rendered with respect to loans to be extended by the
69 bank, savings association, credit union, mortgage banker or other lender, and
70 provided further that the state-certified real estate appraiser or state-licensed
71 real estate appraiser is not requested or required to report a predetermined
72 analysis or opinion of value;

73 [(14)] (15) "License" or "licensure", a license or licensure issued pursuant
74 to the provisions of sections 339.500 to 339.549 evidencing that the person named
75 therein has satisfied the requirements for licensure as a state-licensed real estate
76 appraiser and bearing a license number assigned by the commission;

77 [(15)] (16) "Real estate", an identified parcel or tract of land, including
78 improvements, if any;

79 [(16)] (17) "Real estate appraiser" or "appraiser", a person who for a fee
80 or valuable consideration develops and communicates real estate appraisals or
81 otherwise gives an opinion of the value of real estate or any interest therein;

82 [(17)] (18) "Real estate appraising", the practice of developing and
83 communicating real estate appraisals;

84 [(18)] (19) "Real property", the interests, benefits and rights inherent in
85 the ownership of real estate;

86 [(19)] (20) "Residential real estate", any parcel of real estate, improved
87 or unimproved, that is primarily residential in nature and that includes or is
88 intended to include a residential structure containing not more than four dwelling
89 units and no other improvements except those which are typical residential

90 improvements that support the residential use for the location and property type.
91 A residential unit is a condominium, town house or cooperative complex, or a
92 planned unit development is considered to be residential real
93 estate. Subdivisions are not considered residential real estate. Individual
94 parcels of property located within a residential subdivision shall be considered
95 residential property;

96 [(20)] (21) "Specialized appraisal services", appraisal services which do
97 not fall within the definition of appraisal assignment. The term "specialized
98 services" may include valuation work and analysis work. Regardless of the
99 intention of the client or employer, if the appraiser is acting as a disinterested
100 third party in rendering an unbiased analysis, opinion or conclusion, the work is
101 classified as an appraisal assignment and not specialized services;

102 [(21)] (22) "State-certified general real estate appraiser", a person who
103 holds a current, valid certificate as a state-certified general real estate appraiser
104 issued pursuant to the provisions of sections 339.500 to 339.549;

105 [(22)] (23) "State-certified residential real estate appraiser", a person
106 who holds a current, valid certificate as a state-certified residential real estate
107 appraiser issued pursuant to the provisions of sections 339.500 to 339.549;

108 [(23)] (24) "State-licensed real estate appraiser", a person who holds a
109 current, valid license as a state-licensed real estate appraiser pursuant to the
110 provisions of sections 339.500 to 339.549;

111 [(24)] (25) "Subdivision", a tract of land that has been divided into blocks
112 or plots with streets, roadways, open areas and other facilities appropriate to its
113 development as residential, commercial or industrial sites;

114 [(25)] (26) "Temporary appraiser licensure or certification", the issuance
115 of a temporary license or certificate by the commission to a person licensed or
116 certified in another state who enters this state for the purpose of completing a
117 particular appraisal assignment.

339.710. For purposes of sections 339.010 to 339.180, RSMo, and sections
2 339.710 to 339.860, the following terms mean:

3 (1) "Adverse material fact", a fact related to the property not reasonably
4 ascertainable or known to a party which negatively affects the value of the
5 property. Adverse material facts may include matters pertaining to:

6 (a) Environmental hazards affecting the property;

7 (b) Physical condition of the property which adversely affects the value of
8 the property;

9 (c) Material defects in the property;

10 (d) Material defects in the title to the property;

11 (e) Material limitation of the party's ability to perform under the terms
12 of the contract;

13 (2) "Affiliated licensee", any broker or salesperson who works under the
14 supervision of a designated broker;

15 (3) "Agent", a person or entity acting pursuant to the provisions of this
16 chapter;

17 (4) "Broker disclosure form", the current form prescribed by the
18 commission for presentation to a seller, landlord, buyer or tenant who has not
19 entered into a written agreement for brokerage services;

20 (5) "Brokerage relationship", the relationship created between a
21 designated broker, the broker's affiliated licensees, and a client relating to the
22 performance of services of a broker as defined in section 339.010, and sections
23 339.710 to 339.860. If a designated broker makes an appointment of an affiliated
24 licensee or affiliated licensees pursuant to section 339.820, such brokerage
25 relationships are created between the appointed licensee or licensees and the
26 client. Nothing in this subdivision shall:

27 (a) Alleviate the designated broker from duties of supervision of the
28 appointed licensee or licensees; or

29 (b) Alter the designated broker's underlying contractual agreement with
30 the client;

31 (6) "Client", a seller, landlord, buyer, or tenant who has entered into a
32 brokerage relationship with a licensee pursuant to sections 339.710 to 339.860;

33 (7) "Commercial real estate", any real estate other than real estate
34 containing one to four residential units[, real estate on which no buildings or
35 structures are located,] or real estate classified as agricultural and horticultural
36 property for assessment purposes pursuant to section 137.016,
37 RSMo. Commercial real estate does not include single family residential units
38 including condominiums, townhouses, or homes in a subdivision when that real
39 estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though
40 the units may be part of a larger building or parcel of real estate containing more
41 than four units;

42 (8) "Commission", the Missouri real estate commission;

43 (9) "Confidential information", information obtained by the licensee from
44 the client and designated as confidential by the client, information made

45 confidential by sections 339.710 to 339.860 or any other statute or regulation, or
46 written instructions from the client unless the information is made public or
47 becomes public by the words or conduct of the client to whom the information
48 pertains or by a source other than the licensee;

49 (10) "Customer", an actual or potential seller, landlord, buyer, or tenant
50 in a real estate transaction in which a licensee is involved but who has not
51 entered into a brokerage relationship with the licensee;

52 (11) "Designated agent", a licensee named by a designated broker as the
53 limited agent of a client as provided for in section 339.820;

54 (12) "Designated broker", any individual licensed as a broker who is
55 operating pursuant to the definition of "real estate broker" as defined in section
56 339.010, or any individual licensed as a broker who is appointed by a partnership,
57 association, limited liability corporation, or a corporation engaged in the real
58 estate brokerage business to be responsible for the acts of the partnership,
59 association, limited liability corporation, or corporation. Every real estate
60 partnership, association, or limited liability corporation, or corporation shall
61 appoint a designated broker;

62 (13) "Designated transaction broker", a licensee named by a designated
63 broker or deemed appointed by a designated broker as the transaction broker for
64 a client pursuant to section 339.820;

65 (14) "Dual agency", a form of agency which may result when an agent
66 licensee or someone affiliated with the agent licensee represents another party
67 to the same transaction;

68 (15) "Dual agent", a limited agent who, with the written consent of all
69 parties to a contemplated real estate transaction, has entered into an agency
70 brokerage relationship, and not a transaction brokerage relationship, with and
71 therefore represents both the seller and buyer or both the landlord and tenant;

72 (16) "Exclusive brokerage agreement", means a written brokerage
73 agreement which provides that the broker has the sole right, through the broker
74 or through one or more affiliated licensees, to act as the exclusive limited agent,
75 representative, or transaction broker of the client or customer that meets the
76 requirements of section 339.780;

77 (17) "Licensee", a real estate broker or salesperson as defined in section
78 339.010;

79 (18) "Limited agent", a licensee whose duties and obligations to a client
80 are those set forth in sections 339.730 to 339.750;

81 (19) "Ministerial acts", those acts that a licensee may perform for a person
82 or entity that are informative in nature and do not rise to the level which
83 requires the creation of a brokerage relationship. Examples of these acts include,
84 but are not limited to:

85 (a) Responding to telephone inquiries by consumers as to the availability
86 and pricing of brokerage services;

87 (b) Responding to telephone inquiries from a person concerning the price
88 or location of property;

89 (c) Attending an open house and responding to questions about the
90 property from a consumer;

91 (d) Setting an appointment to view property;

92 (e) Responding to questions of consumers walking into a licensee's office
93 concerning brokerage services offered on particular properties;

94 (f) Accompanying an appraiser, inspector, contractor, or similar third
95 party on a visit to a property;

96 (g) Describing a property or the property's condition in response to a
97 person's inquiry;

98 (h) Showing a customer through a property being sold by an owner on his
99 or her own behalf; or

100 (i) Referral to another broker or service provider;

101 (20) "Residential real estate", all real property improved by a structure
102 that is used or intended to be used primarily for residential living by human
103 occupants and that contains not more than four dwelling units or that contains
104 single dwelling units owned as a condominium or in a cooperative housing
105 association, and vacant land classified as residential property. The term
106 "cooperative housing association" means an association, whether incorporated or
107 unincorporated, organized for the purpose of owning and operating residential
108 real property in Missouri, the shareholders or members of which, by reason of
109 their ownership of a stock or membership certificate, a proprietary lease, or other
110 evidence of membership, are entitled to occupy a dwelling unit pursuant to the
111 terms of a proprietary lease or occupancy agreement;

112 (21) "Single agent", a licensee who has entered into a brokerage
113 relationship with and therefore represents only one party in a real estate
114 transaction. A single agent may be one of the following:

115 (a) "Buyer's agent", which shall mean a licensee who represents the buyer
116 in a real estate transaction;

117 (b) "Landlord's agent", which shall mean a licensee who represents a
118 landlord in a leasing transaction;

119 (c) "Seller's agent", which shall mean a licensee who represents the seller
120 in a real estate transaction; and

121 (d) "Tenant's agent", which shall mean a licensee who represents the
122 tenant in a leasing transaction;

123 (22) "Subagent", a designated broker, together with the broker's affiliated
124 licensees, engaged by another designated broker, together with the broker's
125 affiliated or appointed affiliated licensees, to act as a limited agent for a client,
126 or a designated broker's unappointed affiliated licensees engaged by the
127 designated broker, together with the broker's appointed affiliated licensees, to act
128 as a limited agent for a client. A subagent owes the same obligations and
129 responsibilities to the client pursuant to sections 339.730 to 339.740 as does the
130 client's designated broker;

131 (23) "Transaction broker", any licensee acting pursuant to sections
132 339.710 to 339.860, who:

133 (a) Assists the parties to a transaction without an agency or fiduciary
134 relationship to either party and is, therefore, neutral, serving neither as an
135 advocate or advisor for either party to the transaction;

136 (b) Assists one or more parties to a transaction and who has not entered
137 into a specific written agency agreement to represent one or more of the parties;
138 or

139 (c) Assists another party to the same transaction either solely or through
140 licensee affiliates. Such licensee shall be deemed to be a transaction broker and
141 not a dual agent, provided that, notice of assumption of transaction broker status
142 is provided to the buyer and seller immediately upon such default to transaction
143 broker status, to be confirmed in writing prior to execution of the contract.

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